

## DOT PREEMPTION DETERMINATION APPLICATIONS

August 10, 2005

Docket Number Filing Date Applicant	Subject Summary	Ruling Status	Disposition
PDA-1(R) (14602)  7/17/91  National Solid Wastes Management Assn.	MA, MD, & PA hazardous waste vehicle bonding requirements  State bonding requirements for vehicles transporting hazardous wastes are <u>not</u> <u>preempted</u> under the _obstacle_ test.	PD- 1(R)  Closed	Public Notice: 8/12/91 (56 FR 38294). Decision: 12/11/92 (57 FR 58848). Action on Petition for Reconsideration: 6/9/93 (58 FR 32418). Judicial review dismissed in <u>Massachusetts v. U.S. Dept.</u> <u>of Transportation</u> , Civil Action No. 93-1581 (HHG) (D.D.C. April 7, 1995), <u>reversed</u> 93 F.3d 890 (D.C. Cir. 1996), <u>petition for rehearing and</u> <u>rehearing en banc denied</u> (Nov. 6, 1996).
PDA-2(R) (14655)  11/25/91 1/3/92  National Tank Truck Carriers, Inc.	Mass. requirement for back- up alarm on tank trucks carrying flammable liquids  State tank truck back-up alarm requirement applicable only to in-state transportation is <u>not</u> <u>preempted</u> under the _obstacle_ test.	PD- 5(R)  Closed	Public Notice: 3/23/92 (57 FR 10098).  Decision: 11/29/93 (58 FR 62707).

PDA-3(RF)  12/19/91  Chemical Waste Transportation Institute	City of Chester, WV hazardous waste transportation requirements  Application dismissed because Ordinance regarding transportation of hazardous waste never went into effect.	N/A  Closed	Public Notice: 4/6/92 (57 FR 11654).  Dismissed: 2/2/94 (59 FR 4962).
PDA-4(F) (14612) 12/1/91  Oregon Dept. Of Energy	Washington RAM highway routing restrictions  State restrictions on locations where trucks hauling RAM may enter the State are <u>preempted</u> , under <u>_dual compliance_</u> and <u>_obstacle_</u> tests.	PD-3 (F) Closed	Public Notice: 4/30/92 (57 FR 18537). Decision: 6/3/93 (58 FR 31580).
PDA-5(R) (14609)  6/12/92  Chemical Waste Transportation Institute	Illinois EPA hazardous waste manifest  State hazardous waste manifest requirements are <u>preempted</u> , under the <u>_substantively the same_</u> test.	PD-2 (R)  Closed	Public Notices: 7/21/92 (57 FR 32360), 9/25/92 (57 FR 44402).  Decision: 2/23/93 (58 FR 11176).

<p>PDA-6(R) (14619)</p> <p>7/27/92</p> <p>Nalco Chemical Company</p>	<p>California statute and regulations re flammable and combustible liquids transportation</p> <p>State annual inspection requirement which causes delay is <u>preempted</u> under the _obstacle_ test; marking requirements are <u>preempted</u> because _not substantively the same_ as requirements in the HMR; annual registration is <u>not preempted</u>.</p>	<p>PD-4 (R)</p> <p>Closed</p>	<p>Public Notice: 8/21/92 (57 FR 38081).</p> <p>Decision: 9/20/93 (58 FR 48933).</p> <p>Action on Petition for Reconsideration: 2/15/95 (60 FR 8800).</p>
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<p>PDA-7(R) (4952 &amp; 7486)</p> <p>12/31/92</p> <p>HASA, Inc.</p>	<p>Los Angeles County regulations re permit fee, loading, unloading and storage requirements for tank cars containing chlorine.</p> <p>County provisions prohibiting a tank car from remaining on a siding at point of delivery, connected, for more than 24 hours and requiring attendance during tank car unloading <u>preempted</u> as not <u>_substantively the same_</u> as HMR. County fee on hazmat unloading <u>preempted</u> because not used for transportation-related purposes. County prohibition on on-site storage in tank cars, requirement to unload tank car only to atmospheric or portable tank <u>not preempted</u> as not within reach of HMR. County permit requirement to report information <u>not preempted</u> because authorized by another Federal law.</p>	<p>PD-9(R)</p> <p>Open</p>	<p>Public Notices: 1/26/93 (58 FR 6170), 10/14/93 (58 FR 53239).</p> <p>Decision: 2/15/95 (60 FR 8783), combined with PD-8, 10 &amp; 11 (R) [PDA 9-11].</p> <p>Action on Petitions to Reconsider deferred pending HM-223 rulemaking, "Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage," final rules published 10/30/03 (68 FR 61906) and 4/15/05 (70 FR 20018). Petitions for review filed (Nos. 03-1456 &amp; 05-1191, D.C. Cir.). (Prior petition for judicial review dismissed without prejudice, 5/7/02 (Civil Action No. 00-1312 (WBB))).</p>
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<p>PD-8(R) (4952 ## 216-224 &amp; 7486 ## 16-24)</p> <p>1/5/93</p> <p>Chemical Waste Transportation Institute</p>	<p>Michigan statute and regulations re marking of hazardous and liquid industrial waste-carrying motor vehicles</p> <p>State truck marking requirements different from HMR are <u>preempted</u> under <u>_substantively the same_</u> test for trucks carrying hazardous materials and are <u>preempted</u> under <u>_obstacle_</u> test for trucks not carrying hazardous materials.</p>	<p>PD-6(R)</p> <p>Closed</p>	<p>Public Notice: 1/26/93 (58 FR 6176).</p> <p>Decision: 2/9/94 (59 FR 6186).</p>
<p>PD-9(R) (4952 &amp; 7486)</p> <p>1/26/93</p> <p>Swimming Pool Chemical Manufacturers Assn. (SPCMA)</p>	<p>California statute re storage and handling of hazardous materials</p> <p>State law imposing information reporting requirements (hazmat inventories, business plans, risk management plans) on handlers of hazmat <u>not preempted</u> because authorized by another Federal law.</p>	<p>PD-8(R)</p> <p>Open</p>	<p>Public Notices: 2/12/93 (58 FR 8494), 10/14/93 (58 FR 53239).</p> <p>Decision: 2/15/95 (60 FR 8778), combined with PD-9-11(R) [PDA-7, 10, 11].</p> <p>Action on Petitions to Reconsider - see PD-9(R) [PDA-7(R)].</p>

<p>PD-10(R) (4952 &amp; 7486)</p> <p>1/26/93Swimming Pool Chemical Manufacturers Assn. (SPCMA)</p>	<p>Los Angeles County regulations re transportation of cryogenic liquids</p> <p>County requirements for labeling, name- plating, and placarding hazmat stored on-site; for safety equipment for motor vehicles moving hazmat within a facility; and for on-site storage, transportation and handling of cryogenic fluids <u>not preempted</u> as not within reach of HMR.</p>	<p>PD-10(R)</p> <p>Open</p>	<p>Public Notices: 2/12/93 (58 FR 8480), 10/14/93 (58 FR 53239).</p> <p>Decision: 2/15/95 (60 FR 8790), combined with PD8, 9 &amp; 11(R) [PDA-8, 9 &amp; 11].</p> <p>Action on Petitions to Reconsider - see PD-9(R) [PDA-7(R)].</p>
<p>PD-11(R) (4952 &amp; 7486)</p> <p>1/26/93</p> <p>Swimming Pool Chemical Manufacturers Assn. (SPCMA)</p>	<p>Los Angeles County regulations re loading, and unloading and storage of compressed gases</p> <p>County permit provisions implementing State information reporting requirements <u>not preempted</u> because authorized by another Federal law.</p>	<p>PD-11(R)</p> <p>Open</p>	<p>Public Notices: 2/12/93 (58 FR 8488), 10/14/93 (58 FR 53239).</p> <p>Decision: 2/15/95 (60 FR 8793), combined with PD-8-10(R) [PDA 7, 9 &amp; 10].</p> <p>Action on Petitions to Reconsider - see PD-9(R) [PDA-7(R)].</p>

<p>PDA-12(R) (14666)</p> <p>4/16/93</p> <p>Chemical Waste Transportation Institute and the National Tank Truck Carriers, Inc.</p>	<p>Maryland regulations re hazardous materials drivers' training and certification requirements</p> <p>Training and certification requirements for motor vehicle operators loading or unloading oil or hazardous substances, which exceeded Federal training requirements are <u>preempted</u> as applied to non-resident drivers and <u>not preempted</u> as applied to resident drivers.</p>	<p>PD-7(R)</p> <p>Closed</p>	<p>Public Notice: 5/19/93 (58 FR 29322).</p> <p>Decision: 6/3/94 (59 FR 28913).</p> <p>Action on Petition for Reconsideration: 2/24/95 (60 FR 10419).</p>
<p>PDA-13(R) (14670)</p> <p>9/27/93</p> <p>Chemical Waste Transportation Institute</p>	<p>New York regulations re transfer and interim storage of hazardous waste</p> <p>State regulations prohibiting repackaging hazardous waste and requiring additional information on the manifest are <u>preempted</u>. No determination whether requirement for secondary containment at transfer facilities is preempted.</p>	<p>PD-12(R)</p> <p>Closed</p>	<p>Public Notices: 10/15/93 (58 FR 53614); 12/13/93 (58 FR 65226); 1/31/94 (59 FR 4312).</p> <p>Decision: 12/6/95 (60 FR 62527).</p> <p>Action on Petition for Reconsideration: 4/3/97 (6 FR 15970), Judicial review dismissed, <u>New York v. U.S. Dept. of Transportation</u>, 37 F. Supp.2d 152 (N.D.N.Y. 1999).</p>

<p>PDA-14(R)</p> <p>12/10/95</p> <p>National Tank Truck Carriers, Inc.</p>	<p>City of El Paso, TX Municipal Code provisions requiring hazmat tank truck permits based on inspections held during limited time periods</p> <p>Application withdrawn and docket closed because City of El Paso passed ordinance that deleted hazmat truck permit requirement.</p>	<p>N/A</p> <p>Closed</p>	<p>Public Notice: 1/19/96 (61 FR 1432).</p> <p>Public Notice Closing Docket: 3/21/96 (61 FR 11677).</p>
<p>PDA-15(R) (14614)</p> <p>3/4/96</p> <p>Association of Waste Hazardous Materials Transporters</p>	<p>City of Houston, TX, Fire Code re tank truck requirements, inspections, fees and definition of hazardous material</p> <p>Fire Code requirements are <u>not</u> preempted because they do not apply to transportation subject to the HMR.</p>	<p>PD-14(R)</p> <p>Closed</p>	<p>Public Notices: 3/20/96 (61 FR 11463), 4/9/97 (62 FR 17281).</p> <p>Decision: 12/7/98 (63 FR 67506).</p> <p>Action on Petition for Reconsideration: 6/24/99 (64 FR 33949).</p>



<p>PDA-16(R) (2581)</p> <p>4/8/97</p> <p>New York Propane Gas Association</p>	<p>Nassau County, NY requirements for permits and certificates of fitness for delivery of LPG, including fees and inspections.</p> <p>Permit requirement is <u>preempted</u> with respect to trucks based outside of Nassau County, because annual inspection causes unnecessary delay in transportation of HM. Certificate of fitness requirement is <u>preempted</u> as applied to motor vehicle driver as additional training requirement.</p>	<p>PD-13(R)</p> <p>Closed</p>	<p>Public Notice: 6/10/97 (62 FR 31661).</p> <p>Decision: 8/25/98 (63 FR 45283).</p> <p>Action on Petition for Reconsideration, 10/10/00 (65 FR 60238). Judicial review dismissed, <u>The Office of the Fire Marshal of the County of Nassau v. U.S. Dept. of Transportation</u>, Civil Action No. 00-7200 (E.D. N.Y. Mar. 18, 2002).</p>
<p>PDA-17(R) (2968)</p> <p>5/12/97</p> <p>William E. Comley, Inc. &amp; TWC Corporation</p>	<p>Public Utilities Commission of Ohio requirement for transportation of PG III hypochlorite solution in DOT-spec cargo tank</p> <p>Written requirements of the State of Ohio are consistent with the HMR, and there is no evidence that PUCO applies or enforces a general requirement for the use of a DOT specification cargo tank motor vehicle to transport hypochlorite with less than 16% available chlorine.</p>	<p>PD-15(R)</p> <p>Closed</p>	<p>Public Notice: 10/10/97 (62 FR 53049).</p> <p>Decision: 3/29/99 (64 FR 14965).</p> <p>Action on Petition for Reconsideration: 8/13/99 (64 FR 44265). Complaint for judicial review dismissed, <u>William E. Comley, Inc. v. U.S. Dept. of Transportation</u>, Civil No. C-1-99-880 (S.D. Ohio, June 6, 2000); appeal dismissed, No. 00-3860 (6th Cir. July 12, 2000).</p>

<p>PDA-18(R) (3577)</p> <p>3/4/98</p> <p>Association of Waste Hazardous Materials Transporters</p>	<p>Broward County, FL hazardous materials transportation requirements pertaining to the definition of hazardous material, release reporting, standards for packaging, fees, monthly reporting and vehicle inspection.</p> <p>The following requirements are <u>preempted</u>: (1) certain hazardous materials definitions and all requirements that rely on those definitions, (2) written notification of a hazardous materials release, (3) shipping paper retention for certain hazardous materials transporters, (4) licensing fees for hazardous waste transporters, and (5) monthly transportation activity reporting.</p> <p>The following requirements are <u>not preempted</u>: (1) requirements for oral notification of a hazardous materials release, (2) packaging standards for hazardous waste transport vehicles, (3) shipping paper retention for hazardous waste transporters, (4) periodic vehicle inspection and (5) vehicle marking.</p>	<p>PD- 18(R)</p> <p>Closed</p>	<p>Public Notices: 8/6/98 (63 FR 42098), 11/2/99 (64 FR 59231).</p> <p>Decision: 12/27/00 (65 FR 81950).</p> <p>Action on Petition for Reconsideration: 5/17/02 (67 FR 35193).</p>
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<p>PDA-19(R) (3599)</p> <p>3/9/98</p> <p>National Tank Truck Carriers, Inc.</p>	<p>New York regulations on test reports and marking of gasoline transport vehicles</p> <p>N/A</p>	<p>Open</p>	<p>Public Notice: 6/2/98 (63 FR 30032); comment period expired: 8/31/98.</p> <p>Drafting of decision delayed by extensive discussions with EPA, complexity of the issues involved, litigation, and other preemption matters.</p>
<p>PDA-20 RF (3579)</p> <p>3/2/98</p> <p>Association of Waste Hazardous Materials Transporters</p>	<p>Cleveland, Ohio permit and other requirements for transportation of explosives and other hazardous materials within the City</p> <p>The following requirements are <u>preempted</u> as an obstacle to accomplishing and carrying out Federal hazardous material transportation law and the HMR: (1) day-of-week and time-of-day restrictions in Downtown Area, with respect to radiopharmaceuticals only; (2) advance notification , routing, and escort for pickup or delivery of explosives; and (3) separation distance between vehicles transporting explosives or other hazardous materials</p>	<p>PD-20(RF)</p> <p>Closed</p>	<p>Public Notices: 9/17/98 (63 FR 49804); 6/30/99 (64 FR 35239).</p> <p>Decision: 6/1/01 (66 FR 29867).</p>

<p>PDA-21(R) (3665) 3/23/98</p> <p>Association of Waste Hazardous Materials Transporters</p>	<p>Tennessee annual remedial action fee and written incident reporting requirements Annual remedial action fee is <u>preempted</u> because it is not fair and not used for purposes related to transportation of hazardous material. Written incident reporting requirement is <u>preempted</u> because it is not substantively the same as HMR requirement.</p>	<p>PD-21(R) Closed</p>	<p>Public Notices: 4/9/98 (63 FR 17479), 4/16/98 (63 FR 18964). Decision: 10/6/99 (64 FR 54474). Complaint for judicial review, <u>Tennessee v. U.S. Dept. of Transportation</u>, filed Dec. 3, 1999; order denying claim of state sovereignty, C.A.No. C-3-99-1126 (M.D. Tenn. Feb. 27, 2001); affirmed and remanded, 326 F.3d 729 (6<sup>th</sup> Cir. 2003); cert. denied, 11/3/03 (124 S. Ct. 464); judgment in favor of DOT and AWHMT (6/28/04).</p>
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<p>PDA-22(R) (7092)</p> <p>1/18/00</p> <p>American Trucking Associations</p>	<p>New Mexico statutory and regulatory provisions applicable to transporters of liquefied petroleum gas.</p> <p>The following requirements are <u>preempted</u>:</p> <p>(1) annual cargo tank inspection requirements as applied to vehicles based outside the state because the requirements cause unnecessary delay in hazardous materials transportation;</p> <p>(2) employee examination and identification card requirements as applied to non-domiciled LP-gas personnel because the HMR prohibit States from applying additional training requirements to drivers domiciled outside the state;</p> <p>(3) LP gas transporter license fee because the fee is neither fair nor used for hazardous materials transportation purposes.</p>	<p>PD-22(R)</p> <p>Closed</p>	<p>Public Notice: 3/31/00 (65 FR 17335).</p> <p>Decision: 9/20/02 (67 FR 59396).</p> <p>Action on Petition for Reconsideration: 9/22/03 (68 FR 55080)</p>
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<p>PDA-23(RF) (7021)</p> <p>12/30/99Med/Waste, Inc. &amp; Sanford Motors, Inc.</p>	<p>Morrisville, PA requirements for transporting _dangerous waste,_ including routing restrictions and manifest requirement.Definitions of _infectious waste,_ _hospital waste,_ and _dangerous waste_; routing limitation; and requirement for manifest are <u>preempted</u>.</p>	<p>PD-23(RF) Closed</p>	<p>Public Notice: 4/14/00 (65 FR 20258).</p> <p>Decision: 7/17/01 (66 FR 37260).Action on petition for reconsideration: 1/22/02 (67 FR 2948).</p>
<p>PDA-24(R) (7126) 2/28/00</p> <p>Institute of Makers of Explosives</p>	<p>New Jersey prohibition against transporting blasting caps on the same motor vehicle with more than 5,000 lbs. of other commercial explosives</p> <p>Prohibition against transporting blasting caps on the same vehicle with more than 5,000 lbs. of other commercial explosives is <u>preempted</u> when applied to transportation on a public road or during activities that are incidental to the movement of property and involve a safety aspect of transportation on a public road.</p>	<p>PD-24(R) Closed</p>	<p>Public Notice: 4/7/00 (65 FR 18422).</p> <p>Decision: 6/8/01 (66 FR 30985).</p>

PDA-25(R) (7740)  6/28/00  The Kiesel Company	Missouri prohibition of recontainerization of hazardous waste at transfer facility  Prohibition against recontainerization <u>is</u> <u>preempted</u> because it is not substantively the same as packing requirements in the HMR.	PD- 25(R)  Closed	Public Notices: 8/14/00 (65 FR 49633); 12/11/00 (65 FR 77417).  Decision: 7/16/01 (66 FR 37089).
PDA-26(R) (8026)  8/16/00  Boston & Maine Corporation	Massachusetts definition (designations) of hazardous materials	Open	Public Notices: 11/16/00 (65 FR 69365); 12/19/00 (65 FR 79458); 2/02/01 (66 FR 8845), 5/30/01 (66 FR 29376); comment period expired: 6/12/01.  Drafting of decision delayed by other priority work. Decision expected by 11/15/05.
PDA-27(R) (7906)  8/30/00  ATOFINA Chemicals, Inc.	Louisiana requirements for hazardous materials incident notification  Immediate telephone notification requirement is <u>not preempted</u> ; written reporting requirement is <u>preempted</u> .	Closed	Public Notice: 10/17/00 (65 FR 61370); comment period expired: 1/16/01.  Decision: 11/30/04 (69 FR 68677).

<p>PDA-28(R) (10293)</p> <p>5/31/01</p> <p>Town of Smithtown, New York</p>	<p>Town requirements for permits and certificates of fitness for delivery of LPG, including fees and inspections.</p> <p>Permit requirement is <u>preempted</u> with respect to trucks based outside of the Town of Smithtown, because annual inspection causes unnecessary delay in transportation of HM. Certificate of fitness requirement is <u>preempted</u> as applied to motor vehicle driver as additional training requirement.</p>	<p>PD-28(R)</p> <p>Closed</p>	<p>Public Notice: 8/9/01 (66 FR 41931).</p> <p>Decision: 3/29/02 (67 FR 15276)</p>
<p>PDA-29(R) (13481)</p> <p>8/30/02</p> <p>Medical Waste Institute</p>	<p>Massachusetts regulations on storage and disposal of infectious or physically dangerous medical or biological waste.</p> <p>Different requirements for packaging medical waste for transportation in commerce, labeling requirements, and contents and retention of manifest are <u>preempted</u>. Requirements that generator prepare and sign a shipping paper are <u>not preempted</u> to the extent that they are applied and enforced in the same manner as the HMR.</p>	<p>PD-29(R)</p> <p>Closed</p>	<p>Public Notice: 12/12/02 (67 FR 76444).</p> <p>Decision: 6/22/04 (69 FR 34715)</p>



PDA-30(R) (16456)  10/15/03  Société Air France	Houston, Texas Fire Code requirements on in-transit storage at airport, including requirements to submit a hazardous materials management plan and hazardous materials inventory statement to obtain a permit and to store certain hazardous materials in storage cabinets.	Open	Public Notice: 11/13/03 (68 FR 64413); comment period expired 2/11/04.  Drafting of decision delayed by other priority work, including other preemption decisions. Decision expected by 11/30/05.
PDA-31(F) (20930)  3/14/05  American Trucking Associations, Inc.	District of Columbia Ordinance prohibiting transportation of certain quantities of explosive (Divisions 1.1 & 1.2), flammable gases, poisonous gases and other poisonous materials in Hazard Zones A & B within a 2.2 mile radius of the U.S. Capitol Building ("Capitol Exclusion Zone").	Open	Public Notice: 4/20/05 (70 FR 20630); comment period expired July 19, 2005.